

REMARKS/ARGUMENTS

In response to the Office Action mailed February 5, 2009, Applicant amends his application and requests reconsideration in view of the proposed amendments and the following remarks. In this amendments, Claim 19 and 24 are amended, claims 22 and 25-35 have been withdrawn, claims 1-18 have been cancelled without prejudice, and no claims have been added so that Claims 19-35 remain pending. No new matter has been added.

Claims 1-3, 10-12 and 19-21 were rejected under 35 U.S.C. §112, first paragraph. Applicants have amended claim 19 to more clearly setout that these stabilizing agents comprise antioxidants. Accordingly, reconsideration and withdrawal of the objection is respectfully request.

Claims 1-3 were rejected as being anticipated by Faxon. This rejection is respectfully traversed.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

Faxon discloses stents, polymers and drugs for treating restenosis. Various polymers are disclosed. Faxon also discloses the use of a rapamycin.

Claims 1-3 have been cancelled without prejudice; accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1, 2, 3, 5, 6, 10-2, 14, 15, 19-21, 23 and 24 were rejected as being unpatentable over Faxon in view Tardif. These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d,488,20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria."

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490F.2d 981, 180 USPQ 580 (CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."

Tardif discloses the prevention of restenosis with antioxidants.

Neither reference, whether taken alone or in combination disclose or even suggest the combination of a device, a polymeric solution, a therapeutic agent and an antioxidant. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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